

2011 DRAFTING REQUEST

Bill

Received: 09/29/2010

Received By: btradewe

Wanted: As time permits

Companion to LRB:

For: Administration-Budget

By/Representing: Stinebrink

May Contact: DNR

Drafter: btradewe

Subject: Environment - water quality

Addl. Drafters:

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Stinebrink, BB0037 -

Topic:

Water quality standard variance changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/22/2010	jdyer 10/27/2010	jfrantze 10/28/2010	_____	cduerst 10/28/2010		
/1	btradewe 12/01/2010	jdyer 12/01/2010	jfrantze 12/02/2010	_____	cduerst 12/02/2010		

FE Sent For:

<END>

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FE Sent For:

12/1
Km
94 1/2
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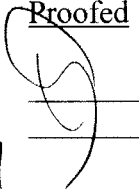
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1/?	btradewe	PI 10/27 jlw	10/27				

FE Sent For:

<END>

2011-13 Budget Bill Statutory Language Drafting Request

- Topic: Variances to Water Quality Standards
- Tracking Code: BB0037
- SBO team: Agriculture, Environment, and Justice
- SBO analyst: Cory Stinebrink
 - Phone: 266-1103
 - Email: Cory.Stinebrink@wisconsin.gov
- Agency acronym: DNR
- Agency number: 370
- Priority (Low, Medium, High): Medium

Intent:

The Department requests the modification of s. 283.15 to eliminate redundant public notice requirements for processing applications for variances to water quality standards and to extend the term for which a variance can be in effect from three years to five years. By definition, a variance of a water quality standard is a formal allowance that a wastewater discharge may contain higher concentrations, up to a certain numeric limit, of a pollutant in a surface water body than otherwise would be necessary to meet standards necessary to protect aquatic, animal or human health.

- The first modification would eliminate redundant public notice requirements for variances, resulting in a single public notice requirement that would reduce staff time and newspaper publishing costs, yet maintain an element of transparency to the process.
- The second modification would extend the maximum term of a variance from three years to five years to coincide with the maximum term of the water quality permit.

Tradewell, Becky

From: Neumann, Paul F - DNR [Paul.Neumann@wisconsin.gov]
Sent: Friday, October 01, 2010 10:47 AM
To: Tradewell, Becky
Subject: FW: Budget statutory Language Request
Attachments: Ch283_15Prop_02_10.doc; VarianceProc283_15Proposed.doc

Hi Becky,

See response below from Tom Mugan in the Bureau of Watershed Management.

Thanks,
Paul

From: Mugan, Tom J - DNR
Sent: Friday, October 01, 2010 09:58 AM
To: Neumann, Paul F - DNR
Cc: Rasmussen, Russell A - DNR; Searle, Greg - DNR
Subject: RE: Budget statutory Language Request

Paul,

The easiest way would be for me to provide my proposed changes to the Statute which I had done months ago when discussing this proposal with others in the Water Division. It is attached. There are a few other clean up changes shown in this document that eliminate outdated language, change the term from 3 to 5 years and add a few limitations that, over the years, EPA has criticized our language for.

The second document is excerpted from a document written when the proposed language was written that, in plain language, describes the primary steps in processing a variance under two possible scenarios (under the modified statutory language). This may help provide explanation for the proposed statutory changes.

Essentially:

- If the variance is processed prior to permit reissuance (variances for new discharges are not allowed under federal regulations and under current DNR practice), the public notice required to reissue the permit serves double duty by also noticing the variance.
- If the variance is processed after the permit is reissued (preserves the permittees right to apply because we didn't foresee the need for a variance when we were processing the permit reissuance), we have to do a public notice of the permit modification to implement the variance at the time of our tentative (proposed) decision.

Let me know if you need more information.

Tom

From: Neumann, Paul F - DNR
Sent: Thursday, September 30, 2010 11:40 AM
To: Mugan, Tom J - DNR
Cc: Rasmussen, Russell A - DNR; Searle, Greg - DNR
Subject: FW: Budget statutory Language Request

Hi Tom,

Can you help me to respond to these questions from the Legislative Reference Bureau regarding your variance proposal for the 2011-13 budget?

10/01/2010

Thanks,
Paul

From: Tradewell, Becky [<mailto:Becky.Tradewell@legis.wisconsin.gov>]
Sent: Thursday, September 30, 2010 11:31 AM
To: Neumann, Paul F - DNR
Cc: Cory.Steinbrink@wisconsin.gov
Subject: Budget statutory Language Request

Paul,

I have questions about a DNR budget statutory language request that has been sent by DOA for drafting. Please feel free to refer this to someone else at DNR if that seems appropriate. The topic of the request is: Variances to Water Quality Standards.

The first requested change is to eliminate redundant public notice requirements, resulting in a single public notice. I am unsure of how the department wants the statute changed to accomplish this. There appear to be three public notices currently required, s. 283.15 (2) (e), (3), and (4) (c). Should the draft eliminate two of them? If so, which two? Or should a new provision on public notice be created to replace the three current requirements? If either the second or third public notice is eliminated, should anyone other than the applicant get notice, for example, EPA? See s. 283.53 (2) (c).

There is no need to provide draft statutory language. I just need a more specific explanation of what changes are wanted.

Thanks for your assistance.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau

Attachment B
Proposed Changes to 283.15 Wis. Stats (WQS Variances)
(03/24/2010 Draft)

283.15 Variances to water quality standard.

(1) Definition. In this section, "variance" means a variance to a water quality standard adopted under s. 281.15.

(2) Request for variance. (a) 1. When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 283.13 (5), the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

2. After an application for a variance is submitted to the department, and until the last day for seeking review of the secretary's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 283.13 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) 1. The department shall specify by rule the information to be included in the application. The permittee shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

2. In addition to the information required under subd. 1, the permittee may, within the time limits specified in subd. 1, submit to the department any other information to support the request for a variance.

(c) The department may request additional information from the permittee within 30 days after receiving the application under par. (b) 1. The permittee shall provide the additional information within 30 days after receipt of the department's request. An application is not complete until the additional information is provided to the department.

(d) If the permittee does not provide information as required under par. (b) or (c), the department shall deny the application.

(e) The department may process a variance application concurrent with processing the permit reissuance application.

(3) Tentative decision. The secretary shall make a tentative decision on the variance within 120 days after receipt of a completed application or at the time the department proposes to reissue the permit. The department shall circulate the tentative decision to the parties in s. 283.53 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1, the department shall include in the notice under this subsection the permit conditions needed to implement the variance and a statement on the effect of the variance, if

Deleted: 2. If a permittee applies for a variance before the promulgation of rules under subd. 1., the permittee shall submit an application for a variance within 30 days after the department issues, reissues or modifies the permit. Within 30 days after receipt of the application, the department shall specify the information which the permittee must include in the application. The permittee shall provide the information within 60 days after receipt of the department's request.

Deleted: 3

Deleted: or 2.

Deleted: or 2

Deleted: either

Deleted: or the information under par. (b) 2.

Deleted: Within 30 days after the department receives a complete application for a variance, the department shall circulate to the parties in s. 283.53 (2) (c) a public notice of receipt of the application for a variance and of any deadlines for submission of written arguments on facts and law by interested parties. In the public notice, the department shall establish a deadline for submitting written comments on the application.

Deleted:

Deleted: issue

Deleted: a. to e.

granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30-day period for written comments on the tentative decision.

(4) Final decision on variance. (a) 1. ~~The modified or reissued permit, including the notice of final determination, shall constitute the final decision on the variance.~~ The secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

Deleted: Within 90 days after expiration of the comment period under sub. (3),

Deleted: the

- a. Naturally occurring pollutant concentrations prevent the attainment of the standard;
- b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements;
- c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place;
- d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the standard;
- e. Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
- f. The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

2. Within 90 days after the expiration of the comment period under sub. (3), the secretary shall deny a requested variance if the permittee fails to make the demonstration required under subd. 1.

~~(b) The decision under this subsection is reviewable under subch. III of ch. 227, except that ss. 227.40 to 227.46, 227.485 to 227.51 and 227.60 do not apply to the decision under this subsection.~~

(5) Conditions on variances. (a) A variance applies only to the permittee requesting the variance and to the pollutant specified in the variance. A variance does not affect or require the department to modify the corresponding water quality standard adopted under s. 281.15.

(b) A variance applies for the term established by the secretary, but not to exceed 5 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations established under par. (c) 1. apply, as appropriate, for the term of the underlying permit as issued, reissued or modified to implement the decision under sub. (4) (a) 1.

Deleted: 3. The failure of the secretary to issue a final decision under subd. 1. or 2. within the time required under this paragraph shall constitute a denial of the application for the variance.

¶
(b) If the secretary issues a decision under par. (a) 1., the secretary shall, as part of the decision, establish all permit conditions needed to implement the variance.

¶
(c) Within 30 days after the date of the decision under par. (a) 1., the department shall issue the notice required under s. 283.53 (2) (b) and (c) of its intent to modify the permit to incorporate the decision to approve all or part of a variance or to modify and approve the variance. Section 283.53 (2) (d) does not apply to the proposed permit modification.

Deleted: d

Deleted: 3

Deleted: b

or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) ~~(b)~~, s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the issuance or reissuance of a permit. Upon the issuance or reissuance of the new permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.

Deleted: d

(c) The permit reissued or modified pursuant to sub. (4) (a) 1. to implement a variance shall require:

Deleted: c

1. Compliance with an initial effluent limitation which at the time the variance is approved represents the level currently achievable by the permittee and which is no less stringent than the limitation achieved under the previous permit. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic effluent standard that applies to the permittee under s. 283.21.

2. Investigation of treatment technologies, process changes, pollution prevention, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 281.15, and submission of reports on the investigations at such times as required by the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

a. Reasonably beyond the technical or financial capability of the permittee; or

b. Unreasonable in light of the conditions specified in sub. (4) (a) 1. a. to e.

(d) The department may impose conditions in the permit as necessary to administer the variance including, but not limited to, additional monitoring requirements.

(e) The department may reopen and modify any permit which implements a variance based on a water quality standards revision adopted under s. 281.15

(6) Renewal. A variance may be renewed using the procedures in and subject to subs. (2) to (5). A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2. or substantially comply with all other conditions of the variance.

(7) Delegation of secretary's authority. The secretary may designate an officer or employee of the department to make any decision that the secretary is required to make under this section.

(8) No right to a hearing. Notwithstanding s. 227.42, there is no right to a hearing under this section.

(9) Relation to permit review. If the secretary approves part or all of a variance or modifies and approves the variance under this section and the department issues a modified water quality based effluent limitation under s. 283.63 for the same substance, the permittee shall comply with

the least stringent of the 2 effluent limitations.

(10) Applicability. (a) Subsections (2) to (5) do not apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation less stringent than the effluent limitation in the permit as issued, reissued or modified.

(b) Subsections (2) to (5) apply if the water quality based effluent limitation results from the decision of the department under s. 283.63 to make the water quality based effluent limitation more stringent than the effluent limitation in the permit as issued, reissued or modified.

(c) This section does not apply to the issuance, reissuance or modification of a permit to incorporate a toxic effluent standard or prohibition promulgated by rule under s. 283.11 (4) or 283.21.

(d) This section does not apply to any effluent limitations established in a permit for a new discharger. For purposes of this provision, a new discharger is a point source for which a permit is issued for the first time.

(e) This section does not apply to any effluent limitations established in a permit issued for a recommencing discharger. For purposes of this provision, a recommencing discharger is a point source whose discharge was interrupted, unless the facility has had continuous permit coverage since the effective date of the statute revision ...[revisor inserts date].

Process A - Variance Process Under Proposed Modified Section 283.15, Stats. Variance Processed Concurrent with Reissuance

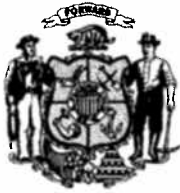
This process occurs when the department knows prior to processing a permit reissuance that the permittee will request a variance. This situation exists most frequently when a permittee requests a variance renewal but may also occur when the department has prior knowledge that the permittee appears to have no other feasible option for achieving water quality limits.

1. Similar to the variance by rule, the permittee applies for a variance at the time of permit reissuance application or when it becomes evident that there is a WQBEL that the permittee will not be able to meet.
2. DNR works with the permittee to make sure the application is complete and then produces the paperwork that justifies the decision to grant or deny. If the proposed decision is to grant, DNR also prepares a determination on the effects to water quality of granting the variance.
3. Since these individual variances are not covered by the formal findings and required demonstrations of an administrative rule, DNR staff reviews the technical and legal basis for a variance and prepares a tentative decision recommendation memo for discussion with the Division Administrator. The Administrator makes the tentative decision.
4. The public notice for permit reissuance serves a double function by also announcing the tentative decision to approve or deny the variance.
5. After considering any public input, if approval is still proposed:
 - a. DNR staff prepares the EPA approval letter and the variance background document for attachment.
 - b. The Division Administrator approves the variance (as delegated by the Secretary) if he/she signs the letter to EPA requesting EPA approval.
 - c. DNR certifies by letter from DNR General Council to EPA that the variance was processed and approved in accordance with applicable codes and statutes.
6. After waiting for EPA review (assuming EPA approves the variance), DNR finalizes the permit reissuance with the variance incorporated.
7. If the decision is to deny, a letter is sent to the permittee from the Division Administrator.

Process B - Variance Process Under Proposed Modified Section 283.15, Stats. Variance Processed Later as Permit Modification

This process occurs when the department does **not** know prior to reissuing a permit that the permittee will request a variance or if DNR denies a variance for mercury or chloride under the administrative rule provisions and the permittee wishes to pursue a variance under the more case-by-case statutory process. Essentially, steps 1 and 2 below are the first 3 steps of Process 1 and the rest of the steps follow Process 3a (except that approval of the variance will mean a permit modification of the already reissued permit).

1. The permittee has 60 days following a permit reissuance or modification to submit an application for a variance.
2. If additional information is needed, the DNR specifies in writing to the permittee any supplemental information needed to process the variance application.
3. Once the application is complete, DNR staff produces the paperwork that justifies the decision to grant or deny. If the recommended action is to approve the variance, staff also prepares a determination on the effects to water quality of granting the variance. The Division Administrator makes the tentative decision.
4. A draft modified permit is written that incorporates the variance and public noticed. The timeline to get to the public notice is 120 days after the application is complete, which is the combined statutory deadlines of 30 days and 90 days in Process 1.
5. After considering any public input, if approval is still proposed:
 - a. DNR staff prepares the EPA approval letter and the variance background document for attachment.
 - b. The Division Administrator approves the variance (as delegated by the Secretary) if he/she signs the letter to EPA requesting EPA approval.
 - c. DNR certifies by letter from DNR General Council to EPA that the variance was processed and approved in accordance with applicable codes and statutes.
6. After waiting for EPA review (assuming EPA approves the variance), DNR finalizes the permit modification with the variance incorporated.
7. If the decision is to deny, a letter is sent to the permittee from the Division Administrator.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0164/P1

RCT:.....

In 10/22

jld

DOA:.....Stinebrink, BB0035 - Water quality standard variance changes

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Note

✓

1

do not gen
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 283.15 (2) (a) of the statutes is renumbered 283.15 (2) (am) and
3 amended to read:

4 283.15 (2) (am) 1. When Within 60 days after the department issues, reissues
5 or modifies a permit to include a water quality based effluent limitation under s.
6 283.13 (5), the permittee may apply to the department for a variance from the water
7 quality standard used to derive the limitation.

8 2. After an application for a variance is submitted to the department under
9 subd. 1., and until the last day for seeking review of the secretary's final decision on

1 the application or a later date fixed by order of the reviewing court, the water quality
2 based effluent limitation under s. 283.13 (5) and the corresponding compliance
3 schedule are not effective. All other provisions of the permit continue in effect except
4 those for which a petition for review has been submitted under s. 283.63. For those
5 provisions for which an application for variance has been submitted under this
6 section, the corresponding or similar provisions of the prior permit continue in effect
7 until the last day for seeking review of the department's final decision or a later date
8 fixed by order of the reviewing court.

History: 1973 c. 74; 1979 c. 221 s. 220 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

9 **SECTION 2.** 283.15 (2) (a) of the statutes is created to read:

10 283.15 (2) (a) If a permit contains a variance or if a permittee anticipates that
11 a renewed permit will include a water quality based effluent limitation[✓] under s.
12 283.13 (5),[✓] when the permittee applies for renewal of the permit[✓] the permittee may
13 apply to the department[✓] for renewal of the variance or for a variance from the water
14 quality standard that would be used to derive the water quality based effluent
15 limitation.[✓]

16 **SECTION 3.** 283.15 (2) (b) 1. of the statutes is amended to read:

17 283.15 (2) (b) 1. The department shall specify by rule the information to be
18 included in the an application[✓] under this subsection[✓]. ~~The permittee shall submit an~~
19 ~~application for a variance within 60 days after the department issues, reissues or~~
20 ~~modifies the permit.~~
Handwritten notes: "strike period" with an arrow pointing to the crossed-out sentence; "move" with an arrow pointing from the crossed-out sentence to the underlined phrase; "plain period" with an arrow pointing to the underlined phrase.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

21 **SECTION 4.** 283.15 (2) (b) 2. of the statutes is repealed.

22 **SECTION 5.** 283.15 (2) (b) 3. of the statutes is amended to read:

23 283.15 (2) (b) 3. In addition to the information required under subd. 1. or 2.,[✓]
24 the permittee may, ~~within the time limits specified in subd. 1. or 2.~~[✓] with the

1 application under par. (a) or (am) 1. ✓, submit to the department any other information
2 to support the request for a variance.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

***NOTE: Should this instead give the permittee more time to submit the
additional information? ✓

3 **SECTION 6.** 283.15 (2) (c) of the statutes is amended to read:

4 283.15 (2) (c) The department may request additional information from the
5 permittee within 30 days after receiving either the application under par. (b) 1. or the
6 ~~information under par. (b) 2.~~ (a) or (am) 1. ✓ The permittee shall provide the additional
7 information within 30 days after receipt of the department's request. An application
8 is not complete until the additional information is provided to the department.

Handwritten notes: "strike period" with an arrow pointing to the circled "2" and "score" with an arrow pointing to the "1" in "(am) 1."

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

9 **SECTION 7.** 283.15 (2) (e) ✓ of the statutes is repealed.

10 **SECTION 8.** 283.15 (3) ✓ of the statutes is renumbered 283.15 (3) (b) and amended
11 to read:

12 283.15 (3) (b) ✓ The secretary shall issue a tentative decision on the an
13 application for a variance under sub. (2) (am) 1. ✓ within 120 days after receipt of a
14 completed application. The department shall circulate the tentative decision to the
15 parties in s. 283.53 (2) (c). If the tentative decision is to grant a variance based upon
16 one or more of the conditions specified in sub. (4) (a) 1. a. to e., the department shall
17 include in the notice under this subsection paragraph ✓ a statement on the effect of the
18 variance, if granted, on the designated use of the water body during the term of the
19 underlying permit. The department shall provide a 30-day period for written
20 comments on the tentative decision.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

21 **SECTION 9.** 283.15 (3) (a) ✓ of the statutes is created to read:

1 283.15 (3) (a) The secretary[✓] shall issue a tentative decision on an application
2 for a variance under sub. (2) (a)[✓] in the notice under s. 283.39[✓] for the renewal of the
3 permit.

4 **SECTION 10.** 283.15 (4) (a) 1. (intro.)[✓] of the statutes is amended to read:

5 283.15 (4) (a) 1. (intro.) ~~Within 90 days after expiration of the comment period~~
6 ~~under sub. (3), the~~[✓] The secretary shall approve all or part of a requested variance,
7 or modify and approve a requested variance if the permittee demonstrates, by the
8 greater weight of the credible evidence, that attaining the water quality standard is
9 not feasible because:

10 History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

10 **SECTION 11.** 283.15 (4) (a) 2.[✓] of the statutes is amended to read:

11 283.15 (4) (a) 2. ~~Within 90 days after the expiration of the comment period~~
12 ~~under sub. (3), the~~[✓] The secretary shall deny a requested variance if the permittee
13 fails to make the demonstration required under subd. 1.

14 History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

14 **SECTION 12.** 283.15 (4) (a) 3. of the statutes is repealed.

15 **SECTION 13.** 283.15 (4) (b) of the statutes is repealed.

16 **SECTION 14.** 283.15 (4) (c) of the statutes is repealed.

17 **SECTION 15.** 283.15 (5) (b) of the statutes is amended to read:

18 283.15 (5) (b) A variance applies for the term established by the secretary, but
19 not to exceed 3 5[✓] years. The term of the initial variance and any renewals thereof
20 may not exceed the time that the secretary determines is necessary to achieve the
21 water quality based effluent limitation. Initial and interim effluent limitations
22 established under par. (c) 1. apply, as appropriate, for the term of the underlying
23 permit as issued[✓], reissued or modified to implement the decision under sub. (4) (b)[✓]
24 (a) 1. or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s.

227.51 (2) shall apply for the purposes of continuing the provisions of a permit
pending the issuance or reissuance of a permit. [✓] Upon the issuance or reissuance of
the new permit, ^{strike Δ} sub. (2) (a) 2. [✓] and s. 283.63 (1) (am) ^{strike period} apply.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

****NOTE: I think that the last sentence is redundant. If something like it is
necessary, language will ^{we have} be developed that applies to both of the variance processes.

SECTION 16. 283.15 (5) (c) (intro.) of the statutes is amended to read:

283.15 (5) (c) (intro.) The department shall require all of the following in a
permit reissued or [✓] modified pursuant to sub. (4) (e) [✓] to implement a variance shall
require: [✓]

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

SECTION 17. 283.15 (5) (c) 1. of the statutes is amended to read:

283.15 (5) (c) 1. Compliance with an initial effluent limitation [✓] which that at the
time the variance is approved represents the level currently achievable by the
permittee and that is no less stringent than the effluent limitation achieved under
the permit before reissuance or modification. [✓] At the time a variance is approved a
compliance schedule and an interim effluent limitation that is achievable by the
permittee during the term of the variance may be specified. The initial and the
interim effluent limitations may not be less stringent than a categorical effluent
limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic
effluent standard that applies to the permittee under s. 283.21.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

SECTION 18. 283.15 (5) (c) 2. (intro.) of the statutes is amended to read:

283.15 (5) (c) 2. (intro.) Investigation of treatment technologies, process
changes, pollution prevention, [✓] wastewater reuse or other techniques that may result
in compliance by the permittee with the water quality standard adopted under s.
281.15, and submission of reports on the investigations at such times as required by
the department. The secretary shall modify or waive the requirements specified in

1 this subdivision if the secretary determines, based upon comments received on the
2 tentative decision under sub. (3), that the requirements of this subdivision are:

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

3 **SECTION 19.** 283.15 (6) of the statutes is amended to read:

4 283.15 (6) RENEWAL. ~~A variance may be renewed using the procedures in and~~
5 ~~subject to subs. (2) to (5).~~ A variance may not be renewed if the permittee did not
6 submit the reports required under sub. (5) (c) 2. or substantially comply with all other
7 conditions of the variance.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60; 1995 a. 227 s. 861; Stats. 1995 s. 283.15.

8 **SECTION 20.** 283.39 (2) (dm) of the statutes is created to read:

9 283.39 (2) (dm) If the applicant applied, under s. 283.15 (2) (a), for a variance,
10 as defined in s. 283.15 (1), a tentative decision to approve or deny the variance,
11 including, if the tentative decision is to grant the variance based upon one or more
12 of the conditions specified in s. 283.15 (4) (a) 1. a. to e., a statement on the effect of
13 the variance, if granted, on the designated use of the water body during the term of
14 the permit;

15 **SECTION 21.** 283.53 (1) (am) of the statutes is created to read:

16 283.53 (1) (am) The department may modify a permit that includes a variance
17 to a water quality standard if the water quality standard is revised.

****NOTE: I am not certain that this is what was intended by proposed s. 281.15 (5)
(e) in DNR's draft language.

(END)

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0164/P1dn

RCT: ^:...

date

jld

This is a preliminary version of the proposal related to variances from water quality standards. It should be reviewed carefully.✓

I have attempted to make it clear that there will be two different processes for dealing with variance requests and to ensure that provisions that should not be part of the new process clearly do not apply to that process.✓ This necessitated some restructuring of s. 283.15.✓

Please note that, for a number of reasons, the LRB only renumbers statutory provisions when necessary. This frequently results in statutes with gaps in letters or numbers, for example because of repeals, but that is not a problem.✓

I eliminated "issues" from current s. 283.15 (2) (a) 1. to reflect the information provided by DNR that variances are not allowed for new discharges.✓

are Please contact me as soon as possible if there are any questions about this draft or if there are ways in which the draft is not consistent with DNR's intent. Please provide me with an explanation of any changes that are wanted, rather than providing an edited version of the draft, so that I can understand the intended legal effect of the changes.✓

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0164/P1dn
RCT:jld:jf

October 27, 2010

This is a preliminary version of the proposal related to variances from water quality standards. It should be reviewed carefully.

I have attempted to make it clear that there will be two different processes for dealing with variance requests and to ensure that provisions that should not be part of the new process clearly do not apply to that process. This necessitated some restructuring of s. 283.15.

Please note that, for a number of reasons, the LRB only renumbers statutory provisions when necessary. This frequently results in statutes with gaps in letters or numbers, for example because of repeals, but that is not a problem.

I eliminated "issues" from current s. 283.15 (2) (a) 1. to reflect the information provided by DNR that variances are not allowed for new discharges.

Please contact me as soon as possible if there are any questions about this draft or if there are ways in which the draft is not consistent with DNR's intent. Please provide me with an explanation of any changes that are wanted, rather than providing an edited version of the draft, so that I can understand the intended legal effect of the changes.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Stinebrink, Cory R - DOA [Cory.Stinebrink@wisconsin.gov]

Sent: Tuesday, November 30, 2010 12:51 PM

To: Tradewell, Becky

Subject: FW: Water Quality Variances Statutory language

Becky-

I've got some comments from the department on the water quality variances draft, LRB-0164. Feel free to contact me or the department with any questions you might have. I see in one of the comments they've given the name and number of someone at the department.

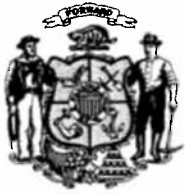
- ✓ • Instead of "renewal" of a permit, please use the term "reissued" or "reissuance" consistent with the statutory language in chapter 283. Variances can be renewed, but the permits are reissued.
- ✓ • Regarding the question asked in the NOTE at the end of Section 5, no there was no intent to allow the permittee more time here. In thinking about this now, we think this subparagraph could probably be deleted, since we believe a permittee can always submit additional information (beyond what is required) that it believes is pertinent to a variance application.
- ✓ • In Section 6, for the case of processing a variance as part of the reissuance, there is a problem with limiting the Department's ability to request additional information to 30 days following the date of receipt of the original variance application. If, for whatever reason, the processing of the permit reissuance gets delayed, we want to be able to request additional information any time up until we make the tentative decision (public notice of the permit reissuance).
- ✓ • In Section 8, the tentative decision should be circulated to parties in both 283.53 (2) (b) and 283.53 (2) (c). We had missed this in our previous version.
- Also in Section 8, we believe that the last part of the paragraph, starting with "If the tentative decision is to grant ...", should also apply to variances processed concurrent with permit reissuance (should also be included in Section 9?).
- ✓ • Regarding the statement made in the NOTE following Section 15 : The current statutory language is difficult to read and understand without getting confused. Could the drafter please talk to our program attorney, Robin Nyffeler at 266-0024. *12/1/10 Robin says ok to strike that sentence*
- ✓ • In Section 17, we believe the words "or modification" should be deleted. For a variance implemented by modification, the permit limitation that the variance must be at least as stringent as is the one that was effective prior to reissuance, not the one that is the reason for the variance request.
- ✓ • Section 21 - We have been unable to reconstruct our reasons for suggesting this change and believe it to be unnecessary, since 283.53 (2) authorizes the Department to modify a permit for cause.

Thanks,

Cory Robert Stinebrink

Executive Policy and Budget Analyst
Agriculture, Environment, and Justice Team
(608)266-1103

11/30/2010



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0164/1
RCTjld:jf

IN 12/1

✓MY

DOA:.....Stinebrink, BB0037 - Water quality standard variance changes

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Onote

✓

do not gen

1 AN ACT ...; relating to: the budget.

✓
Analysis
insert

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 283.15 (2) (a) of the statutes is renumbered 283.15 (2) (am) and
3 amended to read:

4 283.15 (2) (am) 1. When Within 60 days after the department issues, reissues
5 or modifies a permit to include a water quality based effluent limitation under s.
6 283.13 (5), the permittee may apply to the department for a variance from the water
7 quality standard used to derive the limitation.

8 2. After an application for a variance is submitted to the department under
9 subd. 1., and until the last day for seeking review of the secretary's final decision on

the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 283.13 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 283.63. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

SECTION 2. 283.15 (2) (a) of the statutes is created to read:

283.15 (2) (a) If a permit contains a variance or if a permittee anticipates that a ~~renewed~~ ^{reissued} permit will include a water quality based effluent limitation under s. 283.13 (5), when the permittee applies for ~~renewal~~ ^{reissuance} of the permit the permittee may apply to the department for renewal of the variance or for a variance from the water quality standard that would be used to derive the water quality based effluent limitation.

SECTION 3. 283.15 (2) (b) 1. of the statutes is amended to read:

283.15 (2) (b) ^{1.} The department shall specify by rule the information to be included in the an application. ~~The permittee shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit under this subsection.~~

SECTION 4. 283.15 (2) (b) 2. of the statutes is repealed.

SECTION 5. ^{RPJ} 283.15 (2) (b) 3. of the statutes is amended to read:

283.15 (2) (b) 3. In addition to the information required under subd. 1. or 2., the permittee may, ~~within the time limits specified in subd. 1. or 2. with the~~

1 application under par. (a) or (am) 1., submit to the department any other information
2 to support the request for a variance.

****NOTE: Should this instead give the permittee more time to submit the additional information?

3 **SECTION 6.** 283.15 (2) (c) of the statutes is amended to read:

4 283.15 (2) (c) The department may request additional information from the
5 permittee within 30 days after receiving either ~~the~~ ^{strike & an} application under par. (b) 1. [✓] or the
6 ~~information under par. (b) 2.~~ ^{or} (a) or (am) 1. [✓] The permittee shall provide the additional
7 information within 30 days after receipt of the department's request. An application
8 is not complete until the additional information is provided to the department.

9 **SECTION 7.** 283.15 (2) (e) of the statutes is repealed.

10 **SECTION 8.** 283.15 (3) of the statutes is renumbered 283.15 (3) (b) and amended
11 to read: ^{to the permittee and ✓}

12 283.15 (3) (b) The secretary shall issue a tentative decision on ~~the~~ ^{an}
13 application for a variance under sub. (2) (am) 1. within 120 days after receipt of a
14 completed application. The department shall circulate the tentative decision ^{to the}
15 parties in s. 283.53 (2) (c). [✓] If the tentative decision is to grant a variance based upon
16 one or more of the conditions specified in sub. (4) (a) 1. a. to e., the department shall
17 include in the notice under this ~~subsection~~ paragraph a statement on the effect of the
18 variance, if granted, on the designated use of the water body during the term of the
19 underlying permit. The department shall provide a 30-day period for written
20 comments on the tentative decision.

21 **SECTION 9.** 283.15 (3) (a) of the statutes is created to read:

1 283.15 (3) (a) The secretary shall issue a tentative decision on an application
(2) for a variance under sub. (2) (a) in the notice under s. 283.39 for the renewal of the ^{reissuance} permit.
3

4 **SECTION 10.** 283.15 (4) (a) 1. (intro.) of the statutes is amended to read:

5 283.15 (4) (a) 1. (intro.) ~~Within 90 days after expiration of the comment period~~
6 ~~under sub. (3), the~~ The secretary shall approve all or part of a requested variance,
7 or modify and approve a requested variance if the permittee demonstrates, by the
8 greater weight of the credible evidence, that attaining the water quality standard is
9 not feasible because:

10 **SECTION 11.** 283.15 (4) (a) 2. of the statutes is amended to read:

11 283.15 (4) (a) 2. ~~Within 90 days after the expiration of the comment period~~
12 ~~under sub. (3), the~~ The secretary shall deny a requested variance if the permittee
13 fails to make the demonstration required under subd. 1.

14 **SECTION 12.** 283.15 (4) (a) 3. of the statutes is repealed.

15 **SECTION 13.** 283.15 (4) (b) of the statutes is repealed.

16 **SECTION 14.** 283.15 (4) (c) of the statutes is repealed.

17 **SECTION 15.** 283.15 (5) (b) of the statutes is amended to read:

18 283.15 (5) (b) A variance applies for the term established by the secretary, but
19 not to exceed 3 5 years. The term of the initial variance and any renewals thereof
20 may not exceed the time that the secretary determines is necessary to achieve the
21 water quality based effluent limitation. Initial and interim effluent limitations
22 established under par. (c) 1. apply, as appropriate, for the term of the underlying
23 permit as ~~issued~~, reissued or modified to implement the decision under sub. (4) ~~(b)~~
24 (a) 1. or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s.
25 227.51 (2) shall apply for the purposes of continuing the provisions of a permit

1 pending the ~~issuance or reissuance~~ of a permit. ~~Upon the issuance or reissuance of~~
2 ~~the new permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.~~ ✓

****NOTE: I think that the last sentence is redundant. If something like it is
necessary, language will have to be developed that applies to both of the variance
processes. ✓

3 **SECTION 16.** 283.15 (5) (c) (intro.) of the statutes is amended to read:

4 283.15 (5) (c) (intro.) The department shall require all of the following in a
5 permit reissued or modified pursuant to sub. (4) (e) to implement a variance ~~shall~~
6 ~~require:~~

7 **SECTION 17.** 283.15 (5) (c) 1. of the statutes is amended to read:

8 283.15 (5) (c) 1. Compliance with an initial effluent limitation ~~which that~~ at the
9 time the variance is approved represents the level currently achievable by the
10 permittee and that is no less stringent than the effluent limitation achieved under
11 the permit before reissuance or modification. ✓ At the time a variance is approved a
12 compliance schedule and an interim effluent limitation that is achievable by the
13 permittee during the term of the variance may be specified. The initial and the
14 interim effluent limitations may not be less stringent than a categorical effluent
15 limitation that applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic
16 effluent standard that applies to the permittee under s. 283.21.

17 **SECTION 18.** 283.15 (5) (c) 2. (intro.) of the statutes is amended to read:

18 283.15 (5) (c) 2. (intro.) Investigation of treatment technologies, process
19 changes, pollution prevention, wastewater reuse or other techniques that may result
20 in compliance by the permittee with the water quality standard adopted under s.
21 281.15, and submission of reports on the investigations at such times as required by
22 the department. The secretary shall modify or waive the requirements specified in

1 this subdivision if the secretary determines, based upon comments received on the
2 tentative decision under sub. (3), that the requirements of this subdivision are:

3 **SECTION 19.** 283.15 (6) of the statutes is amended to read:

4 283.15 (6) RENEWAL. ~~A variance may be renewed using the procedures in and~~
5 ~~subject to subs. (2) to (5).~~ A variance may not be renewed if the permittee did not
6 submit the reports required under sub. (5) (c) 2. or substantially comply with all other
7 conditions of the variance.

8 **SECTION 20.** 283.39 (3) (dm) of the statutes is created to read:

9 283.39 (3) (dm) If the applicant applied, under s. 283.15 (2) (a), for a variance,
10 as defined in s. 283.15 (1), a tentative decision to approve or deny the variance,
11 including, if the tentative decision is to grant the variance based upon one or more
12 of the conditions specified in s. 283.15 (4) (a) 1. a. to e., a statement on the effect of
13 the variance, if granted, on the designated use of the water body during the term of
14 the permit;

15 **SECTION 21.** 283.53 (2) (am)^x of the statutes is created to read:

16 283.53 (2) (am) The department may modify a permit that includes a variance
17 to a water quality standard if the water quality standard is revised.

18 ******NOTE:** I am not certain that this is what was intended by proposed s. 281.15 (5)
(e) in DNR's draft language.

(END)

Note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0164/lins
RCT:.....

Analysis insert

ENVIRONMENT
WATER QUALITY

Current law generally prohibits a person from discharging pollutants into the waters of this state without a wastewater discharge permit from DNR. Discharge permits often contain requirements to use specified technology to reduce the amount of pollutants in the wastewater discharged. A discharge permit may include more stringent requirements if needed to achieve water quality standards for the waters receiving the discharge. This kind of requirement is called a water quality based effluent limitation. Under current law, after DNR reissues or modifies a discharge permit to include a water quality based effluent limitation, the permittee may apply to DNR for a variance from the water quality standard that is the basis for the limitation.

Under this bill, if a permittee applies for reissuance of a discharge permit that contains a variance or anticipates that DNR will add a water quality based effluent limitation when it reissues a discharge permit, the permittee may request a variance when it applies for reissuance of the permit, rather than waiting until after DNR reissues the permit. This bill also extends the maximum term of a variance from three to five years, which is the maximum term of a discharge permit.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

date

LRB-0164/1dn

RCT: A:...

jld

Cory Stinebrink:✓

This is a redraft of the water quality variances draft, based on the DNR [✓]instructions that you forwarded.

Regarding the comment on ^(CS)Section 6 of the draft, I have modified that language so it only applies to variances requested after reissuance. [✓]Section ^(CS)283.75 (5) will apply to variances requested as part of the application for permit reissuance.

Regarding the comment about ^(CS)Sections 8 and 9, I believe that this is covered by the creation of s. [✓]283.39 (3) (dm) in the draft.

Please let me know if there are any questions or further redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0164/1dn
RCT:jld:jf

December 2, 2010

Cory Stinebrink:

This is a redraft of the water quality variances draft, based on the DNR instructions that you forwarded.

Regarding the comment on SECTION 6 of the draft, I have modified that language so it only applies to variances requested after reissuance. Section 283.37 (5) will apply to variances requested as part of the application for permit reissuance.

Regarding the comment about SECTIONS 8 and 9, I believe that this is covered by the creation of s. 283.39 (3) (dm) in the draft.

Please let me know if there are any questions or further redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0164/1
RCTjld:jf

DOA:.....Stinebrink, BB0037 - Water quality standard variance changes

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Current law generally prohibits a person from discharging pollutants into the waters of this state without a wastewater discharge permit from DNR. Discharge permits often contain requirements to use specified technology to reduce the amount of pollutants in the wastewater discharged. A discharge permit may include more stringent requirements if needed to achieve water quality standards for the waters receiving the discharge. This kind of requirement is called a water quality based effluent limitation. Under current law, after DNR reissues or modifies a discharge permit to include a water quality based effluent limitation, the permittee may apply to DNR for a variance from the water quality standard that is the basis for the limitation.

Under this bill, if a permittee applies for reissuance of a discharge permit that contains a variance or anticipates that DNR will add a water quality based effluent limitation when it reissues a discharge permit, the permittee may request a variance when it applies for reissuance of the permit, rather than waiting until after DNR

reissues the permit. This bill also extends the maximum term of a variance from three to five years, which is the maximum term of a discharge permit.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 283.15 (2) (a) of the statutes is renumbered 283.15 (2) (am) and
2 amended to read:

3 283.15 (2) (am) 1. ~~When~~ Within 60 days after the department issues, reissues
4 or modifies a permit to include a water quality based effluent limitation under s.
5 283.13 (5), the permittee may apply to the department for a variance from the water
6 quality standard used to derive the limitation.

7 2. After an application for a variance is submitted to the department under
8 subd. 1., and until the last day for seeking review of the secretary's final decision on
9 the application or a later date fixed by order of the reviewing court, the water quality
10 based effluent limitation under s. 283.13 (5) and the corresponding compliance
11 schedule are not effective. All other provisions of the permit continue in effect except
12 those for which a petition for review has been submitted under s. 283.63. For those
13 provisions for which an application for variance has been submitted under this
14 section, the corresponding or similar provisions of the prior permit continue in effect
15 until the last day for seeking review of the department's final decision or a later date
16 fixed by order of the reviewing court.

17 **SECTION 2.** 283.15 (2) (a) of the statutes is created to read:

18 283.15 (2) (a) If a permit contains a variance or if a permittee anticipates that
19 a reissued permit will include a water quality based effluent limitation under s.
20 283.13 (5), when the permittee applies for reissuance of the permit the permittee may
21 apply to the department for renewal of the variance or for a variance from the water

1 quality standard that would be used to derive the water quality based effluent
2 limitation.

3 **SECTION 3.** 283.15 (2) (b) 1. of the statutes is renumbered 283.15 (2) (b) and
4 amended to read:

5 283.15 (2) (b) The department shall specify by rule the information to be
6 included in the an application. ~~The permittee shall submit an application for a~~
7 ~~variance within 60 days after the department issues, reissues or modifies the permit~~
8 under this subsection.

9 **SECTION 4.** 283.15 (2) (b) 2. of the statutes is repealed.

10 **SECTION 5.** 283.15 (2) (b) 3. of the statutes is repealed.

11 **SECTION 6.** 283.15 (2) (c) of the statutes is amended to read:

12 283.15 (2) (c) The department may request additional information from the
13 permittee within 30 days after receiving either the an application under par. (b) 1.
14 ~~or the information under par. (b) 2. (am) 1.~~ The permittee shall provide the additional
15 information within 30 days after receipt of the department's request. An application
16 is not complete until the additional information is provided to the department.

17 **SECTION 7.** 283.15 (2) (e) of the statutes is repealed.

18 **SECTION 8.** 283.15 (3) of the statutes is renumbered 283.15 (3) (b) and amended
19 to read:

20 283.15 (3) (b) The secretary shall issue a tentative decision on the an
21 application for a variance under sub. (2) (am) 1. within 120 days after receipt of a
22 completed application. The department shall circulate the tentative decision to the
23 permittee and to the parties in s. 283.53 (2) (c). If the tentative decision is to grant
24 a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a. to
25 e., the department shall include in the notice under this subsection paragraph a

1 statement on the effect of the variance, if granted, on the designated use of the water
2 body during the term of the underlying permit. The department shall provide a
3 30-day period for written comments on the tentative decision.

4 **SECTION 9.** 283.15 (3) (a) of the statutes is created to read:

5 283.15 (3) (a) The secretary shall issue a tentative decision on an application
6 for a variance under sub. (2) (a) in the notice under s. 283.39 for the reissuance of the
7 permit.

8 **SECTION 10.** 283.15 (4) (a) 1. (intro.) of the statutes is amended to read:

9 283.15 (4) (a) 1. (intro.) ~~Within 90 days after expiration of the comment period~~
10 ~~under sub. (3), the~~ The secretary shall approve all or part of a requested variance,
11 or modify and approve a requested variance if the permittee demonstrates, by the
12 greater weight of the credible evidence, that attaining the water quality standard is
13 not feasible because:

14 **SECTION 11.** 283.15 (4) (a) 2. of the statutes is amended to read:

15 283.15 (4) (a) 2. ~~Within 90 days after the expiration of the comment period~~
16 ~~under sub. (3), the~~ The secretary shall deny a requested variance if the permittee
17 fails to make the demonstration required under subd. 1.

18 **SECTION 12.** 283.15 (4) (a) 3. of the statutes is repealed.

19 **SECTION 13.** 283.15 (4) (b) of the statutes is repealed.

20 **SECTION 14.** 283.15 (4) (c) of the statutes is repealed.

21 **SECTION 15.** 283.15 (5) (b) of the statutes is amended to read:

22 283.15 (5) (b) A variance applies for the term established by the secretary, but
23 not to exceed ~~3~~ 5 years. The term of the initial variance and any renewals thereof
24 may not exceed the time that the secretary determines is necessary to achieve the
25 water quality based effluent limitation. Initial and interim effluent limitations

1 established under par. (c) 1. apply, as appropriate, for the term of the underlying
2 permit as ~~issued~~, reissued or modified to implement the decision under sub. (4) ~~(b)~~
3 (a) 1. or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s.
4 227.51 (2) shall apply for the purposes of continuing the provisions of a permit
5 pending the ~~issuance or reissuance~~ of a permit. ~~Upon the issuance or reissuance of~~
6 ~~the new permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.~~

7 **SECTION 16.** 283.15 (5) (c) (intro.) of the statutes is amended to read:

8 283.15 (5) (c) (intro.) The department shall require all of the following in a
9 permit reissued or modified pursuant to sub. (4) (e) to implement a variance shall
10 require:

11 **SECTION 17.** 283.15 (5) (c) 1. of the statutes is amended to read:

12 283.15 (5) (c) 1. Compliance with an initial effluent limitation ~~which that~~ at the
13 time the variance is approved represents the level currently achievable by the
14 permittee and that is no less stringent than the effluent limitation achieved under
15 the permit before reissuance. At the time a variance is approved a compliance
16 schedule and an interim effluent limitation that is achievable by the permittee
17 during the term of the variance may be specified. The initial and the interim effluent
18 limitations may not be less stringent than a categorical effluent limitation that
19 applies to the permittee under s. 283.13 (2) or (4) or 283.19 or a toxic effluent
20 standard that applies to the permittee under s. 283.21.

21 **SECTION 18.** 283.15 (5) (c) 2. (intro.) of the statutes is amended to read:

22 283.15 (5) (c) 2. (intro.) Investigation of treatment technologies, process
23 changes, pollution prevention, wastewater reuse or other techniques that may result
24 in compliance by the permittee with the water quality standard adopted under s.
25 281.15, and submission of reports on the investigations at such times as required by

1 the department. The secretary shall modify or waive the requirements specified in
2 this subdivision if the secretary determines, based upon comments received on the
3 tentative decision under sub. (3), that the requirements of this subdivision are:

4 **SECTION 19.** 283.15 (6) of the statutes is amended to read:

5 283.15 (6) RENEWAL. ~~A variance may be renewed using the procedures in and~~
6 ~~subject to subs. (2) to (5).~~ A variance may not be renewed if the permittee did not
7 submit the reports required under sub. (5) (c) 2. or substantially comply with all other
8 conditions of the variance.

9 **SECTION 20.** 283.39 (3) (dm) of the statutes is created to read:

10 283.39 (3) (dm) If the applicant applied, under s. 283.15 (2) (a), for a variance,
11 as defined in s. 283.15 (1), a tentative decision to approve or deny the variance,
12 including, if the tentative decision is to grant the variance based upon one or more
13 of the conditions specified in s. 283.15 (4) (a) 1. a. to e., a statement on the effect of
14 the variance, if granted, on the designated use of the water body during the term of
15 the permit;

16 (END)